

# **FREEDOM COURT REPORTING**

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1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ALABAMA  
3 MIDDLE DIVISION

5 CASE NUMBER: CV 2:06-CV-496-MEF

6 U.S. BEVERAGE, INC.

Plaintiff(s),

# COPY

8 VS.

9 JOHN BUSTER WALKER, II; TRIDENT

10 MARKETING, INC; and A, B, C, and D,

11 fictitious defendants whose names are  
12 otherwise unknown but which will be  
13 supplemented by amendment,

14 Defendant(s).

16 [www.ijerph.com](http://www.ijerph.com) <http://dx.doi.org/10.3390/ijerph16094504>

17 **TT-TGS: SCHEDULING AND AGGREGATION**

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19 | Page

20 | Page | 6 TOWN B. HALLER - 55

<sup>31</sup> See, for example, the discussion of the 1996 election in *Electoral Politics in South Africa* (1998).

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Mr. Jackson, Sir, 600 North Corrige

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1 product may be the same or similar, but  
2 it's not the same thing.

3 Q. How is it not?

4 A. Because it's a -- we are a  
5 marketing company. We're marketing an  
6 item, we're creating a brand, and we're  
7 doing it through the format -- we're  
8 offering to provide services to U.S.  
9 Beverage.

10 Q. So you think that if you  
11 called something Juice Alive rather  
12 than Cool Tropics, you're doing  
13 something different than them?

14 MR. JACKSON: Object to the  
15 form.

16 A. I think we've created  
17 something that was not there before.

18 Q. In their business; in U.S.  
19 Beverage's business?

20 A. We've created a -- we've  
21 marketed -- we've come up with a name,  
22 a logo, and a market for a product.

23 Q. We can sit here for a

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1 form.

2 A. Sell the name, and we were  
3 offering to provide them with services  
4 that they could not or would not  
5 provide on their own.

6 Q. Are you pursuing sales at  
7 this point?

8 A. Am I individually pursuing  
9 sales?

10 Q. For U.S. Beverage.

11 A. Uh-huh (nodding head). I  
12 continued to open up accounts all  
13 throughout 2004.

14 Q. Are you pursuing sales for  
15 Trident Marketing?

16 A. Very little, if any.

17 Q. What does "very little, if  
18 any" mean?

19 A. I don't recall making any  
20 sales calls on behalf of Trident  
21 Marketing with the exception of U.S.  
22 Beverage.

23 Q. You don't remember making

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1 sales in North Carolina in 2004 for  
2 Trident Marketing?

3 A. Huh-uh (shaking head). I  
4 did not make sales in 2004 through  
5 Trident Marketing.

6 Q. You didn't?

7 A. No.

8 Q. When did Trident Marketing  
9 create a web site for Juice Alive?

10 A. Early part of 2004.

11 Q. Somewhere around when it  
12 was incorporated?

13 A. I think it was actually  
14 before it was incorporated.

15 Q. Did you ever say to U.S.  
16 Beverage, hey, I've got a great brand  
17 name, Juice Alive, that you should use?

18 A. We offered to give them  
19 access to the brand (nodding head).

20 Q. You offered to give them  
21 access to it?

22 A. Uh-huh (nodding head).

23 Q. You didn't just offer to

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1 give it to them, to U.S. Beverage, did  
2 you?

3 A. Give it to them meaning let  
4 them have ownership of it?

5 Q. Sure.

6 A. No, I've never offered them  
7 ownership of the brand.

8 Q. You've just always claimed  
9 it was your own?

10 A. It was the property of  
11 Trident Marketing.

12 Q. Uh-huh (nodding head). And  
13 so whoever came up with this, it's  
14 being used by your corporation, and  
15 you're saying you offered to let U.S.  
16 Beverage use it?

17 A. Yes. We offered to allow  
18 U.S. Beverage to use it and to help  
19 them market it.

20 Q. You realize this would be  
21 beneficial for U.S. Beverage?

22 A. That's one of the reasons  
23 why I offered it to them.

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1 them.

2 Q. But you would put juice in  
3 those machines; is that correct --

4 A. That's correct.

5 Q. -- which you were gaining a  
6 profit from; correct?

7 A. Correct.

8 Q. Did you ever share any of  
9 those profits with U.S. Beverage?

10 A. No, I did not.

11 Q. And you say you were --  
12 During this time frame, you say you  
13 were marketing Juice Alive for U.S.  
14 Beverage --

15 A. (Witness nodding head).

16 Q. -- in the geographical  
17 region?

18 A. (Witness nodding head).

19 Q. I don't understand what --  
20 I mean, I understand what that means,  
21 but when they delivered juice to  
22 somebody that was called Juice Alive,  
23 you were being paid for that; is that

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1 not own that.

2 Q. Any others that you can  
3 think of?

4 A. Huh-uh (shaking head). I  
5 think those are the only two to come to  
6 my mind.

7 Q. So you came to them and  
8 said we think that -- or I think that  
9 you need to keep -- you need to have a  
10 brand identity of your own?

11 A. I felt that was important  
12 (nodding head) --

13 Q. Right.

14 A. -- yes.

15 Q. And are you saying that  
16 they didn't feel that was important?

17 A. I don't think they felt  
18 that way, no. I don't think they felt  
19 that there was any value in a brand.

20 Q. They told you they didn't  
21 think there was any value in a brand,  
22 you're going to testify to that?

23 A. I can't recall if they

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1 specifically said that to me or not,  
2 but the feeling that I got was that  
3 they were not going to invest the time  
4 or the money to create one.

5 Q. Well, that's it; that's  
6 what you wanted to do rather than sell  
7 products, isn't it?

8 MR. JACKSON: Object to the  
9 form.

10 A. No.

11 Q. Is it not true that you  
12 told them that you wanted to not  
13 travel, spend the whole time thinking  
14 up a brand, and not do your job as  
15 sales?

16 A. That's not true, no.

17 Q. What did you say to them?

18 A. On what specific time are  
19 you referring to?

20 Q. Well, what time did you say  
21 this to them?

22 A. I made it clear to Grady  
23 and Tom that I really didn't like to

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1 travel because I was away from my  
2 family, but it didn't impede my ability  
3 to do that, and I continued to perform  
4 my duties; I continued to travel.

5 Q. And you never refused to  
6 travel?

7 A. I can't think of a single  
8 time that I ever refused to do anything  
9 the company asked me to do concerning  
10 travel.

11 Q. When you say the company  
12 asked you to do, were you not doing it  
13 on your own --

14 A. Sure, I was.

15 Q. -- I mean, as part of your  
16 job?

17 A. Yes.

18 Q. And do you not think that  
19 promoting products that U.S. Beverage  
20 sells is part of your job?

21 A. I do believe that's a part  
22 of it, yes.

23 Q. I mean marketing U.S.

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1 Beverage's products would be a part of  
2 your job?

3 A. Promoting them and selling  
4 them and getting the customers, yes,  
5 certainly is a part of my job.

6 Q. And that's not marketing?

7 A. It depends on how you  
8 define marketing, I guess.

9 Q. Well, how would you define  
10 it?

11 A. To me, marketing is the  
12 creation of identity for an entity and  
13 the image that you want to project  
14 yourself to the outside -- to the  
15 public. That's a part of it, I think.

16 Q. And you don't think U.S.  
17 Beverage would want to do that? I  
18 mean, you don't think that's part of  
19 your job at U.S. Beverage?

20 A. To do what?

21 Q. Whatever you defined  
22 marketing as.

23 A. I think that there are

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1 costs that are incurred with what I  
2 consider to be marketing, and I think  
3 that U.S. Beverage was unwilling to  
4 incur those costs.

5 Q. You think U.S. Beverage is  
6 unwilling to incur costs to try to sell  
7 its product which is what you were  
8 supposed to be doing?

9 A. Rephrase that. I don't  
10 quite get that question.

11 Q. Well, I mean, I don't know  
12 how you define marketing, but we've  
13 just -- I mean, what I'm asking you is  
14 that you don't think that -- under your  
15 definition of marketing, you don't  
16 think U.S. Beverage would want to do  
17 that?

18 A. Now or then?

19 Q. Any time.

20 A. I can't speak for them now.  
21 I know that when I brought that subject  
22 up to them, it never seemed to be very  
23 important and there was never a

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1 but -- I'm just trying to get clear a  
2 small point here, and I don't want to  
3 discuss it the afternoon, but, I mean,  
4 it's -- however -- I mean, we know how  
5 U.S. Beverage acquired it apparently;  
6 you say you gave it to them?

7 A. Gave them what?

8 Q. The account.

9 A. I'm referring to one  
10 account in Texas that I can think of.

11 Q. Yeah.

12 A. Correct.

13 Q. All I'm saying is that when  
14 you were servicing it, however you were  
15 doing it, it was the same product that  
16 U.S. Beverage would be using after you  
17 supposedly gave it to them?

18 A. It was the Juice Alive  
19 brand (nodding head) --

20 Q. Okay.

21 A. -- correct.

22 Q. Right. Let's go on. What  
23 is Trident Marketing doing in the

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1 beginning of 2005?

2 A. It is still -- as far as  
3 what it's doing, it's -- we had kind of  
4 -- Tom and Grady and I had talked about  
5 them using the Juice Alive brand, so at  
6 that point in time, it was really just  
7 -- we were -- Tom and Grady were --  
8 U.S. Beverage, I should say, was  
9 ordering product through Supreme and  
10 requesting that it bear the Juice Alive  
11 name, and we were also developing some  
12 point of sale material for some of the  
13 machines that U.S. Beverage had out in  
14 the field.

15 Q. With Trident Marketing?

16 A. That's correct.

17 Q. So who were you working  
18 for at this point?

19 A. Who was I working for?

20 Q. Yeah. Who were you working  
21 for?

22 A. At which point in time are  
23 you talking about?

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1 can you get it directly from Supreme to  
2 a customer or through Trident  
3 Marketing?

4 A. Sure. I can have it  
5 shipped just like I did to U.S.  
6 Beverage; have it shipped directly to  
7 U.S. Beverage's warehouse or any other  
8 distributor that I have.

9 Q. What about to you though;  
10 to Trident Marketing?

11 A. Can I have it shipped to  
12 me?

13 Q. Uh-huh (nodding head).

14 A. If I wanted to, yes.

15 Q. Do you do that?

16 A. No, we don't warehouse --  
17 Trident Marketing doesn't warehouse any  
18 product at our office in Texas.

19 Q. Do you have an office in  
20 Georgia?

21 A. We have an office in  
22 Calvary, Georgia, yeah -- well, it's  
23 not ours, it's North Florida

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1 we had discussed marketing some other  
2 items on-line, but it never  
3 materialized.

4 Q. Right. So this company,  
5 this corporation that you're the sole  
6 shareholder of that you said -- you've  
7 tried to make some distinction of on a  
8 number of occasions as to some  
9 difference between U.S. Beverage and  
10 yourself and Trident is now in 2006  
11 present in the same schools that U.S.  
12 Beverage is making a bid to offer the  
13 same product to the schools?

14 MR. JACKSON: Object to the  
15 form.

16 A. Not quite.

17 Q. Not quite?

18 A. Not quite, right.

19 Q. What's wrong with that?

20 A. The difference is that  
21 Trident Marketing is not selling  
22 directly to those accounts. I have set  
23 up John Walker doing business as Juice

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1 Alive as a sole proprietorship, and  
2 that's how that business is being  
3 managed through John Walker doing  
4 business as Juice Alive. Trident  
5 Marketing, as I mentioned to you, is  
6 simply a company that licenses products  
7 to other distributors.

8 Q. So otherwise it's correct  
9 though?

10 A. Outside of what I have just  
11 explained to you, it is, yes.

12 Q. That's fine. And John  
13 Walker doing business as the company  
14 that we've already discussed came into  
15 existence sometime in 2004?

16 A. If my memory serves me  
17 correct again, I think it was November  
18 or December of 2004, but I can't be  
19 assured of that.

20 Q. While you were vice  
21 president of sales of U.S. Beverage?

22 A. That's correct.

23 Q. Which, of course, you still

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1 Marketing."

2 A. Yes, I do disagree with  
3 that.

4 Q. We just had a long  
5 discussion on this, and you said you  
6 were doing it?

7 A. It's through John Walker  
8 doing business as Juice Alive. Trident  
9 Marketing, again, is a company that  
10 sets up licensing agreements for other  
11 distributors.

12 Q. So you're doing it through  
13 your other company?

14 A. Correct, through John  
15 Walker doing business as Juice Alive.

16 Q. And you view that as some  
17 distinction?

18 A. I just think it's important  
19 to clarify the facts.

20 Q. And you're just trying to  
21 get the corporate assets out of it?

22 A. The corporate assets out of  
23 what?

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1 parts of it; of the letter.

2 MR. JACKSON: I think he's  
3 asking you to go through and read it,  
4 and as you read it, John, tell him what  
5 parts are true and what aren't. If  
6 you've got to go sentence by sentence,  
7 you know --

8 THE WITNESS: Okay.

9 A. "It has been brought to our  
10 attention that John Walker is engaging  
11 to market and distribute the Juice  
12 Alive brand in Mississippi through his  
13 corporation, Trident Marketing" -- I  
14 won't read it all out loud, okay, I'll  
15 just read it to myself.

16 Okay. I disagree with the  
17 first statement, it's not through my  
18 corporation, it's --

19 Q. Well, we've been through --  
20 let's say it's fair enough that you and  
21 I went through up and to the health  
22 insurance, did we not?

23 A. Where is the health